IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2888 OF 2006
WITH
CRIMINAL APPLICATION NO.2889 OF 2006

Balram Chellaram Chhabria ...Applicant
(in both the Applications)

vs.

Chander Lekhraj Bhatia
State of Maharashtra ...Respondents
(in both the Applications)

Mr.S.A.Malkani for the Applicant
Mr.D.P.Adsule, A.P.P. for State
Mr.Vinod Tayade for Respondent No.1

CORAM: A.S.OKA,J.
DATE : DECEMBER 1,2006.

ORAL JUDGMENT:

1. Rule. Learned Advocate for the first Respondent waives service. Learned A.P.P. waives service for the second Respondent. Both the Applications are taken up for hearing forthwith.

2. The Applicant is arraigned as an accused in two complaints filed under section 138 of the Negotiable Instruments Act, 1881 by the first Respondent. The learned Judicial Magistrate First Class convicted the Applicant in both the complaints. The cheques subject matter of both the complaints are in the sum of Rs.1,00,000/-. In a complaint subject matter of the Criminal Application No.2888/2006, the learned Trial Judge, apart from the substantive sentence directed the Applicant to pay a compensation of Rs.1,35,000/-. In a complaint which is

subject matter of Criminal Application No.2889/2006, the learned Trial Judge directed the Applicant to pay compensation of Rs.1,12,000/-. In both the cases the Applicant preferred Appeals against the conviction before the Sessions Court. The Appeals were admitted. By order dated 1st February 2006, the learned Ad hoc Additional Sessions Judge, Kalyan suspended the sentence till the final disposal of the Appeals on the Applicant furnishing a bond and surety. An Application was made by the first Respondent praying that the Applicant be directed to pay or deposit the compensation amount awarded by the learned Trial Judge. The said Application was made in both the appeals which were preferred by the Applicant. By separate orders passed on 3rd July 2006, the learned Ad hoc Additional Sessions Judge, Kalyan allowed the Applications made by the first Respondent and directed the Applicant to deposit the compensation amounts failing which the order of suspension of conviction was ordered to be vacated.

3. The learned Counsel for the Applicant submitted that the complaint filed by the first Respondent is based on Memorandum of understanding dated 10th June 2006. He submitted that if the terms and conditions of the Memorandum of Understanding are considered, it was obvious that there was no subsisting liability in existence on the date on which the cheques were presented by the first Respondent to his Bank. He submitted that since in the substantive Appeals the order of conviction

and order for payment of compensation amount was already suspended, the learned Ad hoc Additional Sessions Judge could not have directed the Applicant to deposit the entire compensation amount. He submitted that the said order could not have been passed when the order of sentence was already suspended by an earlier order. The learned Advocate for the first Respondent supported the impugned order by pointing out the relevant clauses in the agreement. He submitted that on plain reading of the relevant clauses, the liability of the Applicant is clearly established.

4. I have considered the submissions. In case of Maheshwar Dattatraya Kale Vs. Capt. Atul Wasudeo Divekar and another (2006 All M.R. (Cri.) page 544), this Court considered the power of the Appellate Court of suspending the order of payment of compensation amount in an Appeal preferred against the order of conviction passed under section 138 of the Negotiable Instruments Act, 1881. After considering the decision of the Apex court in the Case of Stanny Felix Pinto Vs.Jangid Builders Pvt.Ltd and another (2001 (2) S.C.C. page 416), this Court held as under :

"9. What has been held by the Apex Court is that while suspending the sentence for the offence under section 138 of the said Act of 1881, it is advisable that the Court imposes a condition that the fine amount is

remitted in Court within certain period. The Apex Court observed that if the fine amount is heavy, the court can direct at least a portion thereof to be remitted, as the convicted person wants the sentence to be suspended during the pendency of the Appeal. The Apex Court was dealing with a case of an offence under section 138 of the said Act of 1881. The law laid down by the Apex Court will naturally apply also to a case where compensation has been ordered to be paid. Thus, when there is a conviction under section 138 of the said Act of 1881, while suspending sentence, it is advisable that the Appellate Court imposes a condition of deposit of the compensation amount keeping in mind the object of section 138 of the said Act. When the amount of compensation is heavy, the Court can direct deposit of a reasonable amount. Only in exceptional cases, the Appellate Court can grant interim protection without requiring deposit of compensation amount."

5. The submissions of the learned Counsel for the Applicant are based on the terms and conditions of the Memorandum of Understanding. The substantive Appeals preferred by the Applicant are pending for adjudication. If this Court interprets the Memorandum of Understanding while deciding these Applications it will cause prejudice to one of the parties.

6. However, after considering the terms and conditions incorporated in the Memorandum of Understanding, it can be safely said that certainly this is not an exceptional case where sentence could have been suspended without requiring the Applicant to deposit the substantial part of the compensation amount. In the present case, the Applicant has deposed 25% of the cheque amount i.e. Rs.25,000/- in each case. The cheque amounts in both the cases is Rs.1,00,000/-. Considering the facts and circumstances of the case, interests of justice will be met if the impugned orders are modified and if the Applicant is directed to deposit the cheque amount in both the cases. Considering the deposit of 25% of the cheque amount in each case, now the Applicant will have to deposit 75% of the cheque amounts. Considering the facts and circumstances of the case, sufficient time can be granted to the applicant to deposit the balance amount.

7. Hence the Applications are disposed of by passing the following order :

i) Impugned order dated 3rd July 2006 passed below Exh.9 in Criminal Appeal No.6/2006 is modified and it is directed that instead of compensation amount, the Applicant will deposit a sum of Rs.1,00,000/-.

ii) The Judgment and Order dated 3rd July 2006 passed below Exh.7 in Criminal Appeal No.8/2006 is modified and it is directed that instead of compensation amount, the Applicant will deposit a sum of Rs.1,00,000/- .

iii) Considering the deposit of Rs.25,000/- by the Applicant in each case, the Applicant will have to deposit Rs.75,000/- in each case and for that purpose, time of ten weeks from today is granted to the Applicant.

iv) If the Applicant fails to deposit the aforesaid amounts within a period of ten weeks from today, consequences provided in the impugned orders will follow.

v) All contentions of the parties on merits of the pending Appeals are expressly kept open.

vi) Writ to be sent immediately.

. Parties to act upon an authenticated copy of this order.

JUDGE